रजिस्ट्री सं. डी.एल.-33004 / 97 REGISTERED No. DL-33004/97

भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY
भाग II—खण्ड 1
PART II—Section 1
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं॰ 17] नई दिल्ली, बृहस्पतिवार, जनवरी 30, 1997 / माघ 10, 1918
No. 17] NEW DELHI, THURSDAY, JANUARY 30, 1997 /MAGHA 10, 1918

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 30th January, 1997/Magha 10, 1918 (Saka)

THE NATIONAL ENVIRONMENT APPELLATE AUTHORITY ORDINANCE, 1997

No. 12 OF 1997

Promulgated by the President in the Forty-eighth Year of the Republic of India.

An Ordinance to provide for the establishment of a National Environment Appellate Authority to hear appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 and for matters connected therewith or incidental thereto.

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (*1*) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

CHAPTER I

PRELIMINARY

1. *(1)* This Ordinance may be called the National Environment Appellate Authority Ordinance, 1997. Short title and commencement.

(2) It shall come into force at once.

Definitions.

2. In this Ordinance, unless the context otherwise requires,—

(*a*) "Act" means the Environment (Protection) Act, 1986; 29 of 1986.

(*b*) "Authority" means the National Environment Appellate Authority established under sub-section (*1*) of section 3;

(*c*) "Chairperson" means the Chairperson of the Authority;

(*d*) "Member" means a Member of the Authority;

(*e*) "prescribed" means prescribed by rules made under this Ordinance;

(*f*) "Vice-Chairperson" means the Vice-Chairperson of the Authority;

CHAPTER II

ESTABLISHMENT OF AUTHORITY

Establishment of Authority.

3. (*1*) The Central Government shall, by notification in the Official Gazette, establish a body to be known as the National Environment Appellate Authority to exercise the powers conferred upon, and to perform the functions assigned to it under this Ordinance.

(*2*) The head office of the Authority shall be at Delhi.

Composition of Authority.

4. The Authority shall consist of a Chairperson, a Vice-Chairperson and such other Members, not exceeding three, as the Central Government may deem fit.

Qualifications for appointment as Chairperson. Vice-Chairperson or other Member.

5. (*1*) A person shall not be qualified for appointment as a Chairperson unless he has been—

(*a*) a Judge of the Supreme Court; or

(*b*) the Chief Justice of a High Court.

(*2*) A person shall not be qualified for appointment as a Vice-Chairperson unless he has—

(*a*) for at least two years held the post of a Secretary to the Government of India or any other post under the Central or a State Government carrying a scale of pay which is not less than that of a Secretary to the Government of India; and

(*b*) expertise or experience in administrative, legal, managerial or technical aspects of problems relating to environment.

(*3*) A person shall not be qualified for appointment as a Member unless he has professional knowledge or practical experience in the areas pertaining to conservation, environmental management, law or planning and development.

(*4*) The Chairperson, the Vice-Chairperson and the Members shall be appointed by the President.

Vice-Chairperson to act as Chairperson or to discharge his functions in certain circumstances.

6. (*1*) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the Vice-Chairperson shall act as the Chairperson until the date on which a new Chairperson appointed in accordance with the provisions of this Ordinance to fill such vacancy enters upon his office.

(2) When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the Vice-Chairperson or, as the case may be, such one of the Member as the Central Government may, by notification, authorise in this behalf, shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

Term of office.

7. The Chairperson, Vice-Chairperson or other Member shall hold office as such for a term of three years from the date on which he enters upon his office, but shall be eligible for re-appointment for another term of three years:

Provided that no Chairperson, Vice-Chairperson or other Member shall hold office as such after he has attained,—

(*a*) in the case of the Chairperson, the age of seventy years; and

(*b*) in the case of the Vice-Chairperson or other Member, the age of sixty-five years.

Resignation and removal.

8. (*1*) The Chairperson, Vice-Chairperson or other Member may, by notice in writing under his hand addressed to the President, resign his office:

Provided that the Chairperson, Vice-Chairperson or other Member shall, unless he is permitted by the President to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(2) The Chairperson, Vice-Chairperson or any other Member shall not be removed from his office except by an order made by the President on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court in which such Chairperson, Vice-Chairperson or other Member had been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(*3*) The President may suspend from office the Chairperson, the Vice-Chairperson or any other Member of the Authority in respect of whom a reference has been made to the Supreme Court under sub-section (*2*) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(*4*) The Central Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the Chairperson, the Vice-Chairperson or other Member referred to in sub-section (*2*).

Salaries and allowances and other terms and conditions of service of Chairperson, Vice-Chairperson and other Members.

9. The salaries and allowances payable to, and the other terms and conditions of service (including pension, gratuity and other retirement benefits) of, the Chairperson, Vice-Chairperson and other Members shall be such as may be prescribed by the Central Government.

Vacancy in Authority not to invalidate acts or proceedings.

10. No act or proceedings of the Authority shall be questioned or shall be invalidated merely on the ground of existence of any vacancy or defect in the establishment of the Authority.

CHAPTER III

JURISDICTION AND POWERS OF THE AUTHORITY

Appeals to Authority.

11. (*1*) Any person aggrieved by an order granting environmental clearance in the areas in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards, may within thirty days from the date of such order prefer an appeal to the authority in such form as may be prescribed:

Provided that the Authority may entertain any appeal after the expiry of the said period of thirty days but not after ninety days from the date aforesaid if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(*2*) For purposes of sub-section (*1*), "person" means—

(*a*) any person who is likely to be affected by the grant of environmental clearance;

(*b*) any person who owns or has control over the project with respect to which an application has been submitted for environmental clearance;

(*c*) any association of persons (whether incorporated or not) likely to be affected by such order and functioning in the field of environment;

(*d*) the Central Government, where the environmental clearance is granted by the State Government and the State Government, where the environmental clearance is granted by the Central Government; or

(*e*) any local authority within any part of whose local limits is within the neighbourhood, wherein the project is proposed to be located.

(*3*) On receipt of an appeal preferred under sub-section (*1*), the Authority shall, after giving the appellant an opportunity of being heard, pass such orders, as it thinks fit.

(6) The Authority shall dispose of the appeal within ninety days from the date of filing of the appeal:

Provided that the Authority may for reasons to be recorded in writing dispose of the appeal within a further period of thirty days.

Procedure and powers of Authority.

12. (*1*) The Authority shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and subject to the other provisions of this Ordinance and of any rules made by the Central Government, the Authority shall have power to regulate its own procedure including the fixing of places and times of its inquiry and deciding whether to sit in public or in private.

5 of 1908.

(2) The Authority shall have, for the purposes of discharging its functions under this Ordinance, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:—

5 of 1908.

(*a*) summoning and enforcing the attendance of any person and examining him on oath;

(*b*) requiring the discovery and production of documents;

(*c*) receiving evidence on affidavits;

(*d*) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 requisitioning any public record or document or copy of such record or document from any office;

1 of 1872.

(*e*) issuing commissions for the examination of witness or documents;

(*f*) reviewing its decisions;

(*g*) dismissing a representation for default or deciding it *ex parte;*

(*h*) setting aside any order of dismissal of any representation for default or any order passed by it *ex parte*; and

(*i*) any other matter which may be prescribed by the Central Government.

Financial and administrative powers of Chairperson.

13. The Chairperson shall exercise such financial and administrative powers as may be vested in him under the rules:

Provided that the Chairperson shall have authority to delegate such of his financial and administrative powers as he may think fit to the Vice-Chairperson or any other officer subject to the condition that the Vice-Chairperson or such officer shall, while exercising such delegated powers, continue to act under the direction, control and supervision of the Chairperson.

Staff of Authority.

14. (*1*) The Central Government shall determine the nature and categories of the officers and other employees required to assist the Authority in the discharge of its functions and provide the Authority with such officers and other employees as it may think fit.

(2) The officers and other employees of the Authority shall discharge their functions under the general superintendence of the Chairperson.

(*3*) The salaries and allowances and conditions of service of the officers and other employees shall be such as may be prescribed.

CHAPTER IV

MISCELLANEOUS

Bar of jurisdiction.

15. With effect from the date of establishment of the Authority, no civil court or other authority shall have jurisdiction to entertain any appeal in respect of any matter with which the Authority is empowered by or under this Ordinance.

Proceedings before the Authority to be judicial proceedings.

16. All proceedings before the Authority shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code. 45 of 1860.

Members and staff of Tribunal to be public servants.

17. The Chairperson, Vice-Chairperson and other Members and the officers and other employees of the Authority shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code. 45 of 1860.

Protection of action taken in good faith.

18. No suit, prosecution or other legal proceeding shall lie against the Central Government or against the Chairperson, Vice-Chairperson or other Member of the Authority or any other person authorised by the Chairperson, the Vice-Chairperson or other Member for anything which is in good faith done or intended to be done in pursuance of this Ordinance or any rule or order made thereunder.

Penalty for failure to comply with orders of Authority.

19. Whoever fails to comply with any order made by the Authority, he shall be punishable with imprisonment for a term which may extend to seven years, or with fine which may extend to one lakh rupees, or with both.

Offences by companies.

20. (*1*) Where any offence under this Ordinance has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Ordinance, if he proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent the commission of such offence.

(*2*) Notwithstanding anything contained in sub-section (*1*), where an offence under this Ordinance has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purposes of this section,—

(*a*) "company" means any body corporate and includes a firm or other association of individuals; and

(*b*) "director", in relation to a firm, means a partner in the firm.

Power to remove difficulties.

21. (*1*) If any difficulty arises in giving effect to the provisions of this Ordinance, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Ordinance, as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of the period of three years from the date on which this Ordinance is promulgated by the President.

(*2*) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

Power to make rules.

22. (*1*) The Central Government may, by notification, make rules for carrying out the provisions of this Ordinance.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) the procedure under sub-section (*4*) of section 8 for the investigation of misbehaviour or incapacity of the Chairperson, the Vice-Chairperson or other Member;

(*b*) the salaries and allowances payable to and the other terms and conditions of service of the Chairperson, the Vice-Chairperson and other Members under section 9;

(*c*) the form and the particulars which an appeal shall contain under sub-section (2) of section 11;

(*d*) financial and administrative powers of the Chairperson under section 13;

(*e*) the salaries and allowances and conditions of service of the officers and other employees of the Authority;

(*f*) any other matter which is required to be, or may be, prescribed.

(*3*) Every rule made under this Ordinance shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, a the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rules.

SHANKER DAYAL SHARMA,
President.

RAGHBIR SINGH,

Additional Secy. to the Govt. of India.

Corrigenda

In the Reserve Bank of India (Amendment) Ordinance, 1997 (Ord. 2 of 1997) as published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 9th January, 1997 (Issue No. 7),--

1. At page 2, in line 22, *for* "aproval", *read* "approval".

2. At page 3, in line 10, *for* "fifth", *read* "fifty".

3. At page 6, in line 3, *for* "intrest", *read* "interest".

4. At page 7,--

(*i*) in line 8, *for* "in manner", *read* "in a manner";

(*ii*) in line 17, *for* "direction", *read* "directions";

(*iii*) in line 42, *for* "sub-section", *read* "sub-sections".



Corrigenda

In the Depositories Related Laws (Amendment) Ordinance, 1997 (Ord. 5 of 1997) as published in the Gazette of India, Extraordinary, Part II, Section 1, dated the 15th January, 1997 (Issue No. 9), at page 1,--

(*i*) in the long title, in line 5, *for* "(Acquistion", *read* "(Acquisition";

(*ii*) in line 7, *for* "Law", *read* "Laws".

PRINTED BY THE MANAGER, GOVERNMENT OF INDIA PRESS (PLU), MINTO ROAD, NEW DELHI AND PUBLISHED BY THE CONTROLLER OF PUBLICATIONS, DELHI, 1996.